

IN THE MATTER OF a complaint under s. 4(1)(b)(g) of the Ontario Human Rights Code, R.S.O. 1980, c. 340 by Cathy Pachouris against St. Vito Italian Food and Mike Patera.

Board of Inquiry:

Bruce Dunlop

APPEARANCES:

For the Ontario Human Rights  
Commission and Cathy Pachouris

Bella Fox

For St. Vito Italian Food  
and Mike Patera

Lawrence Geffen

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REASONS FOR DECISION

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Hearing dates: January 14, April 11, 13, 1983.

REC'D O.H.R.C.	
INITIAL	DATE
	DEC 12 1983



## REASONS FOR DECISION

By an amended complaint sworn February 26, 1982, Cathy Pachouris alleged that she had been discriminated against in employment and dismissed because of sex contrary to s. 4(1)(b)(g) of the Ontario Human Rights Code, R.S.O. 1980, c. 340 by the respondent Mike Patera who operated a restaurant called St. Vito Italian Food. It seems likely that under the Human Rights Code, 1981 (Ont.), c. 53 the complaint would have been one of harassment in the work place because of sex contrary to the s. 6(2) which has been in force only since June 15, 1982. However, cases under the former code make it clear that sexual harassment could constitute discrimination in the terms and conditions of employment and, no doubt, if it led to the employee's resignation could constitute dismissal on the basis of sex. In the circumstances of the present case, however, it is the Board's view that the complaint must be dismissed.

This has been an extremely difficult case to decide. The complainant worked on a part-time basis for the respondent for a total of six or seven days over a two week period. Her testimony as to the respondent's offensive behaviour towards her was supported to some extent by the testimony of a friend who had worked at Mr. Patera's establishment for 3 days during the same two week period. The friend gave "similar act" evidence of remarks of an offensive nature made to her. The respondent's testimony categorically denied all of the complainant's allegations and he in turn was supported by testimony of



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two other employees and his wife. Having heard the oral testimony, having examined the transcript closely and carefully several times, the Board was unable to resolve the conflict and in the end can only conclude that the Commission and the complainant have not discharged the onus of establishing the allegations made in the complaint.

The hearing began on January 14, 1983. On that day the respondent appeared without counsel and without witnesses. He indicated that he understood the nature of the proceedings and was prepared to carry on without legal assistance but when the complainant and her friend had both testified Mr. Patera took the stand and while contradicting their evidence, asserted that he knew of several witnesses who would be able to give evidence to support his testimony. When questioned about his failure to come prepared he asserted that he had received no notice of the hearing but only a phone call which led him to believe that "this was just a talk meeting". He agreed that he would like the opportunity to obtain counsel and prepare a response. Counsel for the Commission immediately consented to an adjournment for this purpose. Mr. Patera indicated that he would need to rely on legal aid as his business had failed, he was not working, and was just "getting assistance".

The hearing continued on April 11th and 13th at which time counsel for Mr. Patera cross-examined the complainant and her friend and called the respondent and the three other witnesses. Counsel for

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the Commission called an employee of the Commission to prove that notice of the original hearing had been sent by registered mail to the respondent at his home and that receipt had been acknowledged. The respondent's wife, during her cross-examination, confirmed that it was she who had received the registered letter. While it may have been that the respondent did not fully comprehend the import of the notice it certainly indicated that he had received more than the telephone call he claimed. This incident did nothing to enhance the respondent's credibility in the eyes of the Board.

On the other hand, there were problems in accepting wholly the evidence on behalf of the complainant as well. In her own testimony in January she initially recited four incidents that were objectionable. However, two of these were not directed at her but rather at her friend during occasions when the complainant was not present. The first was a question as to why the complainant's breasts sagged whereas the friend's were firm. The second was a statement that the complainant and her friend were "too pretty" and that he might have to fire them. The complainant could not remember whether she had been told of these incidents by her friend before she quit her job. Hence these incidents can hardly be considered as constituting harassment of the complainant. The other two incidents involved the respondent trying "to touch my behind a couple of times" and asking "if I let my







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boyfriend screw me" to which complainant said she had replied that she did not do that kind of thing because she was only sixteen.

Three other episodes were described later in the examination-in-chief in response to questions as to whether there was anything else she could remember. The respondent allegedly asked how Kotex pads were used but according to the complainant this question was answered by another employee. The other employee, Michelle Desjardins, denied this in her evidence. The next allegation was that the respondent had asked the complainant to come to his apartment one night and wash his dishes. She said no, and nothing further was said. Finally, there was an incident in which the respondent allegedly held a butcher knife close to the complainant, told her if she didn't do her job right he was going to fire her and threatened to pull down her pants. In cross-examination the complainant added still another allegation to the effect that the respondent had, in addition to the remark made to her friend, said to her that she had large breasts.

Assuming that one took as established all of the incidents alleged, and assuming the complainant made clear her objection to that sort of conduct, the question of whether they amounted to the kind of intolerable behaviour that should be classified as sex discrimination would squarely arise. However, for a number of reasons the Board was unable to say that the course of conduct alleged had been established. To begin with there were certain inconsistencies in the complainant's



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evidence. Having said she quit work because of the "perverted" things said to her by the respondent she later indicated that she was having difficulty getting her pay and that this had a bearing on her decision to quit. On her examination-in-chief she dealt with the question of her reaction to the respondent in the following way;

"Q. What was your reaction to Mr. Patera's words to you or to his actions to you, the ones you have just described?

"A. I just gave him a snotty look, walked away, and started working again and went on with my work."

"Q. Did you ever indicate to him verbally that you didn't like what he was doing?"

"A. He knew I didn't like it because of the way I would just look at him, like I would just say, you're ignorant."

On cross-examination the complainant was asked whether she had ever really told the respondent, in so many words that she didn't want to be talked to in that fashion. She answered "I just said he was ignorant, that's all". Pressed as to whether she thought this necessarily implied that she wanted him to stop she answered "I told him before I wanted him to stop". She was asked when she had told him this and she replied "when he was telling me about my breasts". At

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This includes not only sales and purchases but also expenses and income. The document further states that regular audits are necessary to verify the accuracy of these records and to identify any discrepancies.

In the second part, the focus shifts to the management of cash flow. It highlights the need for a clear understanding of the company's current financial position and the ability to forecast future cash requirements. The document suggests implementing a system of budgeting and monitoring cash flow to avoid liquidity issues. It also mentions the importance of maintaining a healthy relationship with creditors and suppliers to ensure timely payments and favorable terms.

The third section addresses the issue of taxation. It provides an overview of the various tax obligations that a business may face, including income tax, sales tax, and property tax. The document offers practical advice on how to minimize tax liability through legitimate means, such as claiming deductions and credits. It also stresses the importance of staying up-to-date with changes in tax laws and regulations.

Finally, the document concludes with a summary of the key points discussed. It reiterates the importance of accurate record-keeping, effective cash flow management, and prudent tax planning. The document encourages business owners to take a proactive approach to financial management to ensure the long-term success and sustainability of their enterprises.

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this point, counsel for the respondent read from her examination-in-chief the only evidence relating to breasts, which was the remark allegedly directed to the complainant's girlfriend. Counsel then said "now you are telling me that he told you also?" The complainant replied "he didn't tell me that also. He told me something else." Asked what it was she replied "he told me that I had big breasts, right...but then he told my girlfriend that mine were saggy, and hers were firm." She said that she had forgotten this incident when she gave her evidence-in-chief. Another example concerns the alleged physical contact between the complainant and the respondent. In chief Miss Pachouris claimed Mr. Patera tried "to touch my behind a couple of times". On cross-examination she referred to his having "grabbed" her behind and when asked about the discrepancy, modified it to "a little squeeze".

There was a degree of uncertainty about some of her evidence as well.

The other reason the Board had difficulty with the complaint had to do with the contradictions between the complainant's evidence and that of the respondent's witnesses - in particular, Michelle Desjardins, a young woman who had worked in the restaurant throughout most of its brief existence. She said that a good deal of joking took place among the staff "just to pass the time by" and acknowledged that some of the jokes were "dirty jokes". She said that the complainant



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"laughed along with it". The significant inconsistency between her evidence and that of the complainant's, however, related to the issue of who was present in the restaurant on the evenings and Saturdays when the complainant was working. According to the complainant, Michelle Desjardins always left the restaurant shortly after the complainant arrived. According to Miss Desjardins she worked in the restaurant on all of the evenings the complainant worked. This testimony was supported by that of Mrs. Patera and another employee, Enza Armata. According to both Miss Desjardins and Mrs. Patera the latter was there much of the time as well. Mrs. Patera also testified that she worked on Saturdays during the day. It was pointed out in argument that this did not mean there was no opportunity for the respondent to have spoken to the complainant alone and to have made the various remarks attributed to him. On the other hand, the setting described by the complainant in which she was alone for many hours in the restaurant with the respondent who kept saying "perverted" things to her is a far different one from that described by the other witnesses in which several persons were around most of the time and in which vulgarity was a cheerful group pastime. It is difficult, in the circumstances, to accept as established the case put forward by the complainant and the Commission. The Board is unable to do so.





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For these reasons, therefore, the complaint is dismissed.

A handwritten signature in dark ink, appearing to read "Bruce Dunlop", written over a horizontal line.

Bruce Dunlop  
Chairman

December 2, 1983

